

CIAB Memorandum

Date: June 5, 2006
To: Docket Clerk, MOAB, F&V, AMS, USDA
From: Perry Hedin
RE: Docket # FV06-930-1 IFR

On behalf of the CIAB, I submit the following in response to the above cited docket action:

Provisions Regarding Grower Mapping Requirements

There is general concurrence with docket, as written, on this topic. However, some clarification is required.

It is noted in the docket that a grower who chooses not to participate in diversion must inform the CIAB of this choice. (Fed. Reg. Vol. 71, No 65, April 5, 2006, hereinafter cited as "FR", page 16983, col. 3.) This is inconsistent with the general concept that the marketing order cannot compel grower action. By the same token, if a grower elects to participate in an activity, such as orchard diversion, he or she can be compelled to do so in the manner set forth by the CIAB rules and regulations.

A grower should not be required to affirmatively inform the CIAB that it is not participating in orchard diversion program as stated in the docket.

§930.20 & 930.120 - Adjustment to representation when a district decreases in volume such that its representation is reduced.

The position stated in the docket on this issue is not consistent with the needs of the industry and reconsideration is both requested and warranted.

A significant problem arose when the reduction in representation for a district was not covered by the terms of the order. New York's representation on the board declined from two (2) seats to one (seat) due to the reduction of its average production level. The CIAB was informed by the USDA that there were no provisions in the order governing which representatives from New York would continue to serve on the board and which representatives would no longer serve.

A smooth transition in representation of a district is a desirable outcome for the CIAB and for the USDA. Issues of representation, both for increases and for decreases in the number of board seats, should be handled easily, fluidly and with a minimum of discord.

The original proposal did this quite effectively. It first encouraged the representatives of the district, all of whom had been appointed to the Board by the Secretary in proper and due fashion, to seek agreement regarding representation. If, and only if, agreement could not be reached, a default, fall back position came into play. The default allowed the members and alternates with the longest remaining terms to remain on the Board.

The CIAB considered various default positions when discussing the recommendation. The one that was proffered to the Secretary allowed for greater continuity on the Board from the district affected by decrease in production volume. It minimized disruption to the representation from the district; it avoided another and

06/05/2006

CIAB Memorandum

2

premature nomination and selection process; it set a default for ultimately determining representation, if necessary.

One of the main purposes of the CIAB's recommendation was to create a default position regarding membership changes if and when agreement between the members and alternates representing a district could not be reached. It is certainly hoped that the representatives of a district could work out representation by agreement. However, we must recognize that agreement cannot always be reached. If the parties are too recalcitrant to agree on representation, then resolution should occur by looking to a default.

The Interim Final Rule, as published, does not effectively or adequately address the concerns of the industry for which resolution was sought with the proposal. The modification proposed by the USDA should be reconsidered and the original proposal adopted.

First, the CIAB's proposal does not usurp the authority of the Secretary to make appointments to the board. The Secretary has already appointed the representatives of the district to the CIAB through the normal nomination and selection process. Obviously, they are all qualified to serve on the CIAB. The agreement of the parties regarding representation or the exercise of the default is simply a paring down of the number of people who serve on the board. Furthermore, the Secretary would continue to have ultimate determination of representation since he or she could reject the agreement of the parties or, for that matter, the exercise of the default position.

Second, there is no default position established in the IFR. This was one of the principal desired results included in the recommendation.

Third, the described in the docket shifts the power determining representation of a district from the interested parties to the board. This should not be the case.

The growers and handlers in the district vote for their representatives. If representation reduces due to crop size, it is the growers and handlers who should help influence the resolution of the problem by participating, either directly or indirectly, in the agreement process. In the proposal posted in the docket, the interested parties have absolutely no say in determining who will represent them. Only the CIAB has a say in who will remain seated.

The proposed modification gives to the CIAB the authority to decide who will be recommended to represent a district. It injects into the process influences and elements that may have absolutely no relevance to the growers and handlers of the district but that may influence deciding who it is that is recommended to the Secretary.

It is better to give the interested parties, the growers, handlers and representatives of the district, the ability to influence who it is that will represent them than it is to give this authority to the CIAB, most of whom do not represent the district that may be in question.

If the original proposal recommended by the CIAB continues to be unacceptable, a statement to the effect that

06/05/2006

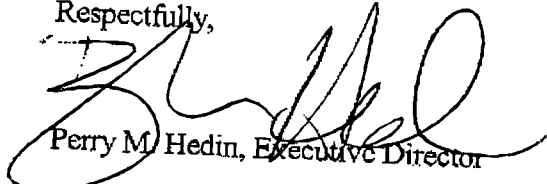
CIAB Memorandum

3

the change is subject to the approval and action of the Secretary would help clarify that the Secretary is the person who, in fact, appoints membership of the board.¹

For the above reasons, it is respectfully submitted that the proposal originally passed by the CIAB and recommended to the Secretary be adopted as presented.

Respectfully,



Perry M. Hedin, Executive Director

Cherry Industry Administrative Committee

¹ This authority is certainly implicit in everything that the CIAB undertakes, but an explicit statement to that effect might be warranted in this occasion.